



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2004

Ms. Cynthia Villarreal-Reyna
Agency Counsel Section Chief
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2004-1799

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197493.

The Texas Department of Insurance (the "department") received a request for twenty-five categories of information concerning rate, form, or manual filings. You state that some of the requested information will be provided to the requestor. You advise, however, that American National Lloyds Insurance Company ("American National") objects to the release of the company's rate filing regarding homeowners insurance. While the department takes no position regarding whether the information at issue should be withheld, you state, and provide documentation showing, that the department notified American National of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). Furthermore, you claim that the cover letter and transmittal sheet that are part of the filing at issue contain information that is excepted from disclosure under section 552.137 of the Government Code. We have reviewed the submitted information.

We begin by noting that the portion of the present request pertaining to American National asks for information relating to two specified filings. The specific filings requested are identified by Link # 70350, pertaining to minimum account risk score requirements, and Link # 70351, pertaining to revisions to the company's General Rules regarding credit scores in relation to the company's Homeowners Program. You have only submitted information relating to the Link # 70351 filing to this office for our review.

American National has submitted comments to this office in which the company argues that certain information in filings to the department is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. In its comments, American National objects, in part, to disclosure of filings related to “credit scores, Choice Point’s ATTRACT credit score model, [American National’s] Easy Pay option, and minimum account risk score requirements.” Thus, while American National objects to disclosure of filing information relating to minimum account risk score requirements, the department has not submitted such information for review. This ruling does not address the applicability of American National’s claimed exceptions for information that has not been submitted for our review by the department. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body seeking attorney general’s opinion under the Act must submit a copy or representative samples of the specific information requested).

Next, we note that American National raises section 552.104 of the Government Code as an exception to disclosure. Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. Section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the department does not raise section 552.104, we find that this section is not applicable in this instance. *See* Open Records Decision No. 592 (1991) (governmental body may waive statutory predecessor to section 552.104). Therefore, the information at issue is not excepted from disclosure under section 552.104 of the Government Code.

American National also argues that certain information in the company’s filings with the department is excepted from disclosure under section 552.110 of the Government Code.¹ Section 552.110 of the Government Code protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov’t Code § 552.110(a), (b). Section 552.110(a) protects the property interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See* Gov’t Code § 552.110(a). A “trade secret”

¹ American National contends that portions of the company’s information are excepted from disclosure under section 552.101 as information made confidential by law, apparently on the basis that the information described by American National constitutes trade secrets of the company. This argument is properly asserted under section 552.110(a) of the Government Code, the exception under the Public Information Act (the “Act”) providing that trade secrets are excepted from required public disclosure. As American National has provided no arguments contending that any of the information at issue is otherwise confidential by law, we address the company’s trade secret argument pursuant to section 552.110(a) of the Government Code.

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business in that it is not simply information as to single or ephemeral events in the conduct of the business, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing this information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 232 (1979). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990). However, we cannot conclude that section 552.110(a) is applicable unless it has been shown

that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov’t Code § 552.110(b); *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

The submitted information pertains solely to revisions to American National’s General Rules regarding credit scores in relation to the company’s Homeowners Program. In the company’s comments to this office, American National generally objects to disclosure of information relating to credit scores. However, American National has not provided any specific arguments explaining why the submitted rule revision information is protected as a trade secret for purposes of section 552.110(a), or explaining how release of the submitted rule revision information would cause substantial competitive harm to the company for purposes of section 552.110(b). Rather, American National’s specific arguments under section 552.110 of the Government Code pertain to certain reports compiling data about the company’s earned exposures, earned premium, claim counts, and incurred loss amounts by geographic area. The department has not submitted such information to this office for review in connection with the present ruling. We find that American National’s arguments under section 552.110 do not apply to the rule revision information the department has submitted for our review. Consequently, we determine that American National has not established that any of the information submitted for our review in connection with the present request is excepted from disclosure under section 552.110 of the Government Code.

Section 552.137 of the Government Code provides:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
- (c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. The department states that it has not received consent to release the e-mail addresses at issue. Accordingly, we have marked the e-mail addresses in the submitted information that the department must withhold pursuant to section 552.137 of the Government Code.

In summary, we have marked e-mail addresses that must be withheld under section 552.137 of the Government Code. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'David R. Saldivar', with a stylized flourish at the end.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 197493

Enc: Submitted documents

c: Mr. Birny Birnbaum
Center for Economic Justice
P.O. Box 5355
Austin, Texas 78763
(w/o enclosures)

Mr. Robert J. Campbell
American National Property and Casualty Companies
1949 East Sunshine Street
Springfield, Missouri 65899-0001
(w/o enclosures)